IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 9726 of 2007(G)

PETITIONER:

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1. ANIL K. MENON, "SHREYAS",
   KAPPALANDIMUKKU, KOCHI- 682002.

2. K.J.LEENUS, KATTIKAT HOUSE,
   CHERIAKADAVU KARA, KANNAMALY P.O.,
   KOCHI- 682008.

3. DAVIS GEORGE, PEARLY SHELL,
   KUNNUMPURAM, FORT KOCHI P.O.,
   KOCHI 682001.

BY ADV. SRI.M.AJAY

RESPONDENTS:

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1. THE STATE OF KERALA,
   (REPRESENTED BY ITS PRINCIPAL SECRETARY),
   REVENUE DEPARTMENT, THE SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
   ERNAKULAM.

3. THE TAHSILDR, ALUVA, ERNAKULAM DIST.

4. THE VILLAGE OFFICER,
   NEDUMBASSERY, ERNAKULAM DISTRICT.

5. THE SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, THIRUVANANTHAPURAM.

BY G.P. SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF SALE DEED DT.15.4.2002 TRANSFERRING 500/52000 UNDIVIDED INTEREST IN THE LAND TO SMT.K.V.SULOCHANA.

P2: TRUE COPY OF CONSTRUCTION AGREEMENT DT.24.9.01 ENTERED INTO BETWEEN SMT.K.V.SULOCHANA AND THE BUILDER.

P3: TRUE COPY OF THE RECEIPT EVIDENCING RECEIPT OF PROPERTY TAX FROM SMT.K.V.SULOCHANA FOR HER APARTMENT B-12 FOR THE YEAR 2005-06 DT.27.4.05.

P4: A LIST SHOWING THE OWNERS OF THE DIFFERENT APARTMENTS IN THE BUILDING.

P5: TRUE COPY OF THE NOTICE DT.21.12.05 FROM R3 TO 2ND PETITIONER.

P6: TRUE COPY OF THE 2ND PETITIONER'S REPLY DT.9.1.06.

P7: TRUE COPY OF THE NOTICE FROM R3 DT.13.2.05 CALLING UPON THE 2ND PETITIONER TO PRODUCE DOCUMENTS.

P8: TRUE COPY OF THE 2ND PETITIONER'S REPLY DT.21.2.06.

P9: TRUE OCPY OF THE ORDER ISSUED BY R3 DT.20.2.07.

P10: TRUE COPY OF THE ASSESSMENT ORDER DT.20.2.07 IN FORM V SERVED ON 10.3.07.

P11: TRUE COPY OF THE DEMAND NOTICE IN FORM VI DT.20.2.07 SERVED ON 10.3.07.

P12: TRUE COPY OF THE CIRCULAR DT.28.9.90 ISSUED BY R5.

P13: .DO. DT.28.4.92 .DO.

P14: TRUE COPY OF JUDGMENT IN WPC 6830/07 DT.1.3.07.

P15: TRUE COPY OF JUDGMENT IN W.A. 627/07 DT.13.3.07.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.9726 of 2007

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Dated this the 21st day of June, 2007.

JUDGMENT

The petitioner is challenging Ext.P9 order whereunder the third respondent has assessed and demanded building tax in respect of a residential cum commercial complex comprising of 60 apartments besides the commercial area where a hotel is said to be running. Petitioners were only land owners who have transferred undivided right in land to the builder as promoter for constructions and sale of flats. It is seen that demand is raised on petitioners for the reason that building agreements the flat owners had with the builder are not registered. The whole approach of the Tahsildar is incorrect and against the statute. Even if prior agreements are not produced, the same does not justify assessment of several individual residential apartments as a single unit. Moreover, commercial area is separately assessed and tax is also stated to be paid without dispute. In the circumstances, W.P. is allowed quashing all the impugned orders with direction to the third respondent to serve notice on individual owners or on the association of owners/residents after collecting information or after making a visit of the flat, make assessment on each and every flat owner

depending on the plinth area treating each flat as separate one. Revised assessment should be completed within a period of three months from now. Government Pleader will forward copy of this judgment to the Tahsildar for compliance.

C.N.RAMACHANDRAN NAIR
Judge

pms